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JUL 02 2008

In re Application of
William F. Leek
Application No. 09/729,491
Filed: December 3, 2000
Attorney Docket No. SST/1035

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition, filed March 7, 2008, requesting withdrawal of the holding of abandonment in the above-identified application under 37 CFR 1.181.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The application was held abandoned for a failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action mailed July 5, 2007, which set a shortened statutory period for reply of three (3) months. A Notice of Abandonment was mailed on January 9, 2008.

In response, on March 7, 2008, the present petition was filed wherein petitioner asserts that a reply was timely filed. To support this assertion, petitioner submitted a copy of a Electronic Acknowledgement Receipt which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on January 7, 2008, of , *inter alia*, Request for Continued Examination and Amendment. Petitioner explains that, in view of a 3-month extension of time also submitted, the response period of October 5, 2007 was properly extended, since January 5, 2008 was Saturday and Monday January 7, 2008 was the next business day.

Petitioner's argument is not well taken. Pursuant to 37 CFR 1.136(a)(2) a reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application, but in no situation may an applicant reply later than the maximum time period set by statute. Since the maximum time period set by statute was January 5, 2008, any response, including an appropriate extension of time, must have been filed no later than January 5, 2008, since January 5, 2008 was a Saturday. Accordingly, this application was properly held abandoned as of October 5, 2007.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the \$770 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

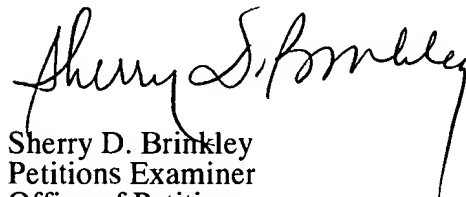
Further correspondence with respect to this matter should be addressed as follows:

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 Customer Service Window, Mail Stop Petitions
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By facsimile: **(571) 273-8300**
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions